Taylor IV, William - BALTO

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ent: Friday, November 16, 2001 8:18 PM
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Subject: Project Congress - Indemnity Agreement

Tax Indemnity Agreement

Attached please find the draft tax indemnity agreement.

<<Tax Indemnity Agreement>>

Carlo de Vito Piscicelli
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New York, New York 10017
Phone (212) 455-2304
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OCC 009544

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT is made and entered into this ____ day of ___________, by and among _______, _______ and _______ (collectively, the "Tax Exempt Entities"), CareFirst, Inc., a Maryland corporation ("CareFirst"), and Wellpoint Health Networks Inc., a Delaware corporation ("Wellpoint").

WHEREAS, CareFirst, Wellpoint and Congress Acquisition Corporation, a Maryland corporation ("Congress"), have entered into an Agreement and Plan of Merger dated as of ________, 2001 (as the same may be amended, supplemented or modified, the "Merger Agreement") which provides that Congress will merge with and into CareFirst (the "Merger");

WHEREAS, prior to the Merger, CareFirst converted its Primary CareFirst Insurers (as defined in the Merger Agreement) from not-for-profit to for-profit status and issued 100% of its outstanding shares of capital stock to the Tax Exempt Entities (collectively, the "Conversion");

WHEREAS, CareFirst has received an Internal Revenue Service ("IRS") private letter ruling dated _________, that the Conversion qualifies as a tax free transaction and that no gain or loss will be recognized by CareFirst from the Conversion for Federal income tax purposes (the "IRS Ruling");

WHEREAS, it is a condition to Wellpoint's obligation to consummate the Merger that the Tax Exempt Entities enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and intending to be legally bound, the parties hereto agree as follows:

1. Indemnity. Each Tax Exempt Entity agrees to indemnify, defend and save Wellpoint, CareFirst and their respective affiliates harmless from and against such Tax Exempt Entity's Pro Rata Share (as defined below) of the net amount of Federal income tax liabilities (together with any penalties, interest, fines and additions to tax, but not taxes, if any, resulting from the receipt of indemnity payments by CareFirst pursuant to this Agreement) incurred by CareFirst, as a result of a revocation or modification, in whole or in part, of the IRS Ruling; provided, however, that the Tax Exempt Entities shall have no liability under this Agreement if the revocation or modification, of the IRS Ruling is a result of actions taken by CareFirst or Wellpoint following the Merger, without the consent of the Tax Exempt Entities. CareFirst or Wellpoint shall promptly notify the Tax Exempt Entities of any assertion by the IRS of a tax liability for which the Tax Exempt Entities may be responsible under this Agreement. If at the time a claim is asserted the Tax Exempt Entities have net assets in excess of $___ million, the Tax Exempt Entities shall have the opportunity to participate jointly with Wellpoint and CareFirst in contesting any such asserted tax liability. The settlement of any claim which would result in a payment by the Tax Exempt Entities under this Agreement without the Tax Exempt Entities' written consent shall constitute a waiver of the right to indemnity; provided, however, the Tax Exempt Entities shall not unreasonably withhold their consent to any settlement.

2. Miscellaneous.

(a) Net Worth. Each Tax Exempt Entity shall maintain a net worth (computed in accordance with generally accepted accounting practices, applied on a consistent basis, except that Wellpoint's shares shall be valued at the end of each calendar quarter on the basis of the average closing price on the New York Stock Exchange for the last ten trading days of the calendar quarter) of not less than such Tax Exempt Entity's Pro Rata Share of $__________ for the six years following the Conversion.

(b) Further Agreements. Until this Agreement terminates, each Tax Exempt Entity agrees (i) to maintain its status as a tax-exempt organization under section 501(c)(4) of the Code, and (ii) not to qualify as a "private foundation" as defined under section 509(a) of the Code. No party to this Agreement will take any position inconsistent with the IRS Ruling or the request for the IRS Ruling.

(c) Termination. This Agreement shall terminate on the expiration of the applicable statute of limitations for the period in which the Conversion occurs. This Agreement shall also terminate automatically in the event Wellpoint is audited by the IRS, the relevant tax year is closed and the IRS determines that no tax is due with respect to the Conversion.

(d) No Setoff. No payment required to be made pursuant to this Agreement shall be subject to any right of setoff, counterclaim, defense, abatement, suspension, deferment or reduction on an unrelated claim.

(e) Amendments. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally or in writing, except that any term of this Agreement may be amended by writing signed by each of the parties hereto, and the observance of any such term may be waived (either generally or in a particular instance and either retroactively or prospectively) by a writing signed by the party against whom such waiver is to be asserted.

(f) Notices. All notices and other communications provided for or permitted hereunder shall be made in accordance with the notice provisions of the Recapitalization Agreement.

(g) Successors and Assigns. This Agreement (or any right or obligation hereunder) may not be assigned by any party without the prior written consent of the other parties, except that each of CareFirst and Wellpoint may assign its rights and obligations in this Agreement, whether by a writing or operation of law, to a successor to all or substantially all of its business without such consent in which event this Agreement shall inure to the benefit of and be binding upon the successor.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed within the State.

(i) Waiver, Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The waiver or consent (whether express or implied) by any party of the breach of any term or conditions of this Agreement shall not prejudice any remedy of any other party in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which any party would otherwise have on any future occasion under this Agreement.

(j) Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable atttorneys' fees and costs in addition to any other available remedy.

(k) Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reasons, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all other rights and privileges shall be enforceable to the fullest extent permitted by law.

(l) No Lien. Nothing in this Agreement is intended to impose a lien or encumbrance on any assets of the Tax Exempt Entities. Subject to Section 2(a) of this Agreement, notwithstanding anything else in this Agreement to the contrary, nothing in this Agreement shall prevent the Tax Exempt Entities from conducting its operations in the ordinary course or from carrying out its social welfare purpose.

(m) Definition. "Pro Rata Share" shall mean ___% for ___, ___% for ___ and ___% for ___.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

____

By:_____________________________
Name:___________________________
Title:___________________________

____

By:_____________________________
Name:___________________________
Title:___________________________

____

By:_____________________________
Name:___________________________
Title:___________________________

CAREFIRST, INC.

By:_____________________________
Name:___________________________
Title:___________________________

WELLPOINT HEALTH NETWORKS, INC.

By:_____________________________
Name:___________________________
Title:___________________________